S.B.CIVIL SECOND APPEAL NO.167/2000

Rajendra Kumar
vs.
Gopi Ram.

DATE OF JUDGMENT ::: 9.1.2006

PRESENT

HON'BLE MR. PRAKASH TATIA, J.

Mr. RK Thanvi a/w Mr. VK Mathur, for the appellant.
Mr. Manish Shishodia, for the respondent.

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Heard learned counsel for the parties.

The landlord/plaintiff/respondent filed suit for eviction of his tenant/defendant/appellant on the ground of default committed by the tenant in payment of rent and on the ground of personal bonafide necessity. The suit of the plaintiff was decreed by the trial court vide judgment and decree dated 10.8.1999, against which the appellant/defendant preferred first appeal which was dismissed by the first appellate court vide judgment and decree dated 2.5.2000.

Learned counsel for the appellant submitted that the plaintiff filed suit for eviction of the appellant from the rented premises despite the fact that the landlord has got a slightly bigger shop with him, therefore, there arises no

question of any hardship to the respondent/plaintiff in case, the decree of eviction is not passed in favour of the landlord against the tenant from the suit premises. It is also submitted that it is mere wish of the landlord and not a dire necessity.

I have considered the submissions of learned counsel for the appellant and perused the reasons given by the courts below.

It is not the case of the appellant that the plaintiff is seeking the eviction of the tenant so as to get the smaller shop but he sought eviction of the tenant so that he may expand his shop. Two courts below considered the facts of the case on the issue of personal bonafide necessity and comparative hardship and recorded concurrent finding of fact against the tenant.

In view of the above, no substantial question of law arises in this appeal, therefore, this appeal deserves to be dismissed.

At this stage, learned counsel for the appellants prayed that the appellant may be given two years' time to vacate the suit premises for which learned counsel for the respondent has serious objection.

Looking to the totality of the facts, since it is a commercial premises, therefore, in the interest of justice,

one year's time is granted to the appellant to vacate the suit shop.

Therefore, it is ordered that in case, the appellant furnishes a written undertaking before the trial court within a period of one month that he shall hand over the vacant possession to the landlord by or before 31.12.2006, shall not part with the possession or sublet the suit premises during this period and shall pay all the arrears of rent and decreetal amount, if due, within a period of two months from today before the trial court or directly to the landlord, the decree under challenge shall not be executed till 1.1.2007. The appellant shall also deposit the rent month by month by 15th day of each succeeding month of his tenancy in the trial court.

In case of non-compliance of the order or default in payment of rent mentioned above, the decree shall become executable forthwith.

With this concession, this appeal is dismissed.

(PRAKASH TATIA), J.

S.Phophaliya